

will be completed when a borrower requests FmHA or its successor agency under Public Law 103-354's consent to a severance agreement, or other instrument of similar effect, so that items to be acquired by the borrower through other credit and subject to a chattel lien will not become a part of the real estate securing the FmHA or its successor agency under Public Law 103-354 debt. Some examples of items which may be acquired subject to a chattel lien are silos, storage bins, bulk milk tanks, irrigation or income producing facilities, non-farm enterprise facilities, and recreational equipment. County Supervisors are authorized to give FmHA or its successor agency under Public Law 103-354 consent by executing Form FmHA or its successor agency under Public Law 103-354 440-26 and any necessary severance agreements, provided that the following determinations are made:

(a) The financing arrangements are in the best interest of the Government and the borrower.

(b) The transaction will not adversely affect FmHA or its successor agency under Public Law 103-354's security position and will be within the borrower's debt-paying ability, and

(c) The facility does not exceed the borrower's needs, is modest in cost and design; and is otherwise in line with FmHA or its successor agency under Public Law 103-354 financing policies. OGC will be requested to approve any severance agreement submitted by a borrower that is of a type not previously approved for use in the State and, when necessary, to issue closing instructions. The State Director may request the OGC to prepare a severance agreement instrument for use in the State.

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#### § 1965.21 Assignment and release of Soil Conservation or similar program payments.

The County Supervisor may take an assignment on income to be received under USDA Programs or similar contracts to protect the financial interest of the Government or to facilitate loan servicing. The assignments of all or a portion of the income from the assignment may be released to the borrower

by the County Supervisor when not to the financial detriment of the Government, and when payments due on all FmHA or its successor agency under Public Law 103-354 loans have been made from other income or the assigned income is needed for family living and farm operating expenses. This income will *not* be shown on Form FmHA or its successor agency under Public Law 103-354 1962-1, "Agreement for the Use of Proceeds/ Release of Chattel Security." The receipt of these proceeds and their planned use will be clearly identified on the current farm plan.

#### § 1965.22 Deceased borrower.

Deceased borrower cases will be handled under § 1962.46 of subpart A of part 1962 of this chapter.

#### § 1965.23 Bankruptcy and insolvency.

Bankruptcy and insolvency cases will be handled under § 1962.47 of subpart A of part 1962 of this chapter. For SFH loans, refer to subpart C of part 1965 of this chapter.

#### § 1965.24 Servicing note-only cases.

Each loan made on a note-only basis without real estate security will be serviced in a manner consistent with the best interests of the FmHA or its successor agency under Public Law 103-354.

(a) Sale of real property on which improvements were made with note-only FmHA or its successor agency under Public Law 103-354 funds. Any loan evidenced only by an unsecured note will be collected by voluntary means at the time of the sale of the property, if possible. If collection is not possible, the loan may be assumed by the purchaser of the property on the terms of the note if the assumption is determined to be in the FmHA or its successor agency under Public Law 103-354's best financial interest. If collection or assumption cannot be effected, consideration should be given to settling the account in accordance with Subpart B of Part 1956 of this chapter, if it is eligible, obtaining judgment, or classifying it as collection-only. In case of a judgment sale, the State Director with the advice of OGC and the U.S. Attorney, will authorize an employee to attend the sale

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and if appropriate, enter a bid on behalf of the Government under Subpart A of Part 1955 of this chapter.

(b) *Assumption of note-only when real property securing another FmHA or its successor agency under Public Law 103-354 loan is involved.* When a borrower has an FmHA or its successor agency under Public Law 103-354 loan secured by real estate and another FmHA or its successor agency under Public Law 103-354 loan evidenced only by a note and the real estate is to be transferred and the entire secured real estate debt is to be assumed, all or a part of the unsecured note up to the present market value of the property in excess of existing liens must also be assumed.

[51 FR 4140, Feb. 3, 1986, as amended at 51 FR 45439, Dec. 18, 1986]

### **§ 1965.25 Release of FmHA or its successor agency under Public Law 103-354 mortgage without monetary consideration in certain cases.**

(a) *Additional real estate security owned by an entity member(s).* Real estate owned by a member(s) of an entity-borrower, which was taken as additional security for a loan secured by real estate, may be released if it is needed for the entity member(s) to finance a separate operation and the remaining real estate adequately secures the entity loan(s). A release will not be considered if a subordination can be approved for the same purpose. The County Supervisor will document in the case file why a subordination is not feasible.

(b) *Release of real estate from mortgage because of mutual mistake.* Land or buildings included in the mortgage through mutual mistake, when substantiated by the facts of the situation, may be released from the mortgage by the State Director. The release is contingent on a determination of the State Director, with the advice of the OGC, that a mutual error existed at the time such property was included in the Government's mortgage.

(c) *No evidence of indebtedness.* The FmHA or its successor agency under Public Law 103-354 mortgage may be released by the County Supervisor in situations where there is no evidence of an existing indebtedness secured by the

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mortgage in the records of the FmHA or its successor agency under Public Law 103-354 County, State, and Finance Offices.

(d) *Release of valueless liens.* State Directors are authorized to release FmHA or its successor agency under Public Law 103-354 mortgages or other liens when the mortgages or liens have no present or prospective value or when their enforcement would likely be ineffectual or uneconomical. This includes release of a *junior* lien on the borrower's dwelling financed with an SFH loan and located on a *nonfarm tract* when the junior lien was taken as additional security for a Farmer Program loan(s). This authority does not extend to valueless judgment liens or valueless statutory redemption rights except with the consent of the OGC. The following information will be obtained in determining present or prospective value:

(1) *Appraisal report.* A market value appraisal report on the security prepared by an FmHA or its successor agency under Public Law 103-354 employee authorized to appraise under § 761.7 of this title.

(2) *Lienholders.* The names of the holders of prior liens on the property, the amount secured by each lien which is prior to the FmHA or its successor agency under Public Law 103-354, the amount of taxes or assessments, and other items which might constitute a prior claim. This information will be recorded in the running case record of the borrower's County Office case folder and submitted to the State Director for review.

[51 FR 4140, Feb. 3, 1986, as amended at 53 FR 35795, Sept. 14, 1988; 56 FR 15830, Apr. 18, 1991; 57 FR 18681, Apr. 30, 1992; 58 FR 44752, Aug. 25, 1993; 64 FR 62569, Nov. 17, 1999]

### **§ 1965.26 Liquidation action.**

(a) *Voluntary liquidation—(1) General.* When a borrower contacts FmHA or its successor agency under Public Law 103-354 and asks about voluntarily liquidating security, the borrower will be sent attachments 1 and 2 of exhibit A of subpart S of part 1951 of this chapter or attachments 1, and 3, and 4 and the preliminary application forms by certified mail, or the forms will be hand delivered at the County Office. The